

REVIEW OF LEGAL FRAMEWORK GOVERNING MEDIA



MODERNIZING MEDIA LAW IN PAKISTAN

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Table of Contents

EXECUTIVE SUMMARY	1
List of Laws, Rules, Regulations and Judicial Decisions	4
Print Media	4
Electronic Media	4
Telecommunication and Cyber Laws	6
General Laws	8
Relevant Provisions of Other Laws	9
Jurisprudence: case law	10
ABOUT THE AUTHORS	12

EXECUTIVE SUMMARY

Freedom of expression is a cornerstone of democracy and liberty. Democracy depends on and can only flourish where free speech rights are respected. On the other hand, it contracts and decays where speech is unduly restricted to serve interests of a particular class, ideology or institution. In various forms and to varying degrees, in Pakistan freedom of expression remains shackled across all mediums, all frontiers, and all areas of thought and conduct. The anachronistic laws that were put in place during the restrictive colonial period were inherited by the ruling elites of Pakistan in 1947, and have been preserved and expanded with zeal since then. On the other hand, any such laws which were still in force in the United Kingdom at that time have long since been repealed and/or reformed there.

Freedom of expression not only is essential as an underpinning of political participation but it also represents a basic human good, i.e. knowledge and the search for the 'truth'. It is essential for societal tolerance, cultural exchange and self-restraint. It promotes autonomy for individuals and communities. Law should support the right to free speech not just for its own sake, albeit subject to well-defined, proportionate restricts as are necessary, but also as a means for achieving self-realisation. It should provide a balancing between competing rights and interests in a society which is made up of divergent groups. Freedom of expression is thus essential for inclusiveness and cohesion in society.

These philosophical truths have motivated this research and review, which provides a comprehensive technical and critical analysis of the legal framework governing expression and the media in Pakistan. The study not only critically assesses statute law but also the case law developed by the courts of Pakistan while interpreting the laws. Someone once said that 'we all are under a constitution', but this is ultimately what judges say it is. Courts are vested with the principal task of interpreting the law, especially when there is a dispute about it in society. Most of the existing commentaries and reports in Pakistan about the state of media law have failed to allocate sufficient attention to how courts have interpreted various provisions relating to expression and the media. An important body of research looks at this issue from a journalist's, or a sociologist's point of view, while far less research is available which looks at it from a legal and jurisprudential point of view. There is, in particular, a dearth of legal analyses covering all aspects of Pakistani media law in a single document.

The document you have in your hands is the result of an intense process of research, consultation and analysis, and represents a go-to document for understanding media law in Pakistan. It provides a bird's eye, skeleton view of this immensely rich and detailed area of law, which cannot be subjected to either undue generality or simplistic treatment. Media law in Pakistan is going through an evolutionary process where rapid change is, and has, taken place, for better or for worse. It can be claimed that this process has reached a tipping point – due to political and social developments – and that it could go in any direction from here. There is a need for holistic reform and overhaul of media laws, as well as the institutions, which regulate the media. This report should serve as an important starting point for such a process of reform.

This review provides an overview of legal developments which have taken place since the inception of the State of Pakistan, along with the historical background of many of the most contentious laws. It explains the root-cause of many of the challenges that the media and freedom of expression face in Pakistan and it also provides recommendations and directions for addressing these challenges.

The first chapter provides an overview of international standards relating to freedom of expression and the right to information. This starts with an analysis of the general guarantees of the right, as well as the scope of permissible restrictions on it. Subsequent sections of this Chapter provide an overview of international standards in relation to each of the thematic issues covered by the chapters in the Compendium as a whole.

Chapter II provides an analysis of the constitutional scope of the freedom of expression rights of citizens, as well as the obligations which this imposes on the various governments within Pakistan. It begins with an analysis the text of key constitutional provisions and the way they have been interpreted by courts. Moreover, an X-ray of ‘freedom of press’ as it is understood and practised in Pakistan has also been provided, which among other things assesses the extent to which special rights are afforded to the media.

Chapter III is dedicated to the foot soldiers of free speech: those who make a living out of exercising this fundamental human right, namely journalists and media workers. An important focus of the chapter is on the employment and labour laws which are applicable to journalists. In Pakistan, known for having become and for tolerating being a death trap for journalists, safety and protection rules for journalists remain in disarray or are non-existent. Specific laws and systems providing protection to journalists working in dangerous environments remain non-existent. This chapter also presents a review of self-regulation and self-help systems provided by journalists’ associations.

Print media remains a thriving business in Pakistan, unlike in many developed countries, where digital media and technology companies, such as Google, have revolutionised how people access and consume news. Chapter IV is dedicated to analysing the laws regulating the print media. These laws, in a nutshell, remain arcane, burdensome and out-dated. The discussion of ethical codes of conduct, essential to the integrity and professionalism of media organisations, is also covered, as this remains an area in dire need of industry-wide reform.

One of the most technical areas of media law is the set of rules governing broadcasters, a sector which has seen exponential growth in Pakistan over the last decade, and which is given detailed treatment in Chapter V. This chapter provides an analysis of broadcast regulation, and it probes into a number of technical areas. Competitive issues are also discussed, along with an in-depth analysis of licensing rules, spectrum management, ownership rules and the legal framework governing the transition from analogue to digital transmission systems.

Chapter VI addresses public service broadcasting (PSB), which is an invaluable part of a democratic media ecology. While a huge amount of public money is spent on PSBs in Pakistan, they remain largely undemocratic, non-pluralistic and non-

inclusive. The need for reform of PSBs in Pakistan is greater than for any other media institution.

Chapter VII somehow lies at the heart of this report. It reviews the many restrictions on the content of what may be printed or published in Pakistan, many of which apply across different expressive mediums. It reveals a wide range broadly worded and vague restrictions, which the courts have not done enough to narrow in scope through interpretation.

Telecommunications are playing an increasingly central role in facilitating an ever-growing range of expressive opportunities. Chapter VIII analyses Pakistan's telecom policy and the regulatory bodies which oversee it. The system is highly problematical. It was hoped that with the advent of telecommunications and the Internet, the space for freedom of expression would automatically be expanded due to the unique nature of these new mediums. However, the government has failed to break away in this sector from the tainted past of repressive laws that stifled free speech. The analysis reflects the fact that successive Pakistani governments tend to resist the logic of evolution and more often than not embrace and espouse draconian policies restricting freedom of expression.

The right to information (RTI) is an evolving constitutional right. Chapter IX analyses some of the key federal and provincial legislation relating to RTI. Because these laws are relatively new in Pakistan, there is a dearth of judicial precedent on the subject matter, so the analysis is largely text-based. The chapter also analyses key secrecy laws which restrict the scope of the right to information laws, and which tend to undermine the constitutional imperatives of granting access to information.

List of Laws, Rules, Regulations and Judicial Decisions

Print Media

Acts & Ordinances

-) Associated Press of Pakistan Ordinance, 2002
-) The Press Council of Pakistan Ordinance, 2002 (XCVII of 2002)
-) The Press, Newspaper, News Agencies and Books Registration Ordinance, 2002
-) Registration of Printing Presses and Publications Ordinance, 1997 (XLVIII)
-) The National Press Trust (Appointment of Chairman) Ordinance, 1972 (XXIX)
-) Newsprint Control Ordinance, 1971, (XI)
-) Working Journalists (Conditions of Service) Ordinance, 1960 (XVI)
-) Newspaper Employees (Conditions of Services) Act, 1973 (Act LVIII of 1973)
-) Working Journalists (Conditions of Services) Ordinance, 1960 (Ordinance XVI of 1960)
-) West Pakistan Press and Publications Ordinance, 1963 (XXX)
-) The Associated Press of Pakistan (Taking Over) Ordinance, 1961 (XX)
-) Press (Emergency Powers) (Amendment) Act, 1950
-) Press and Registration of Books (Amendment) Act, 1952 (XXX of 1952)
-) Press (Emergency Powers) Act, 1931
-) Press and Registration of Books Act, 1867.

Rules & Regulations

-) Working Journalists (Wage Board) Rules, 1960
-) Press/Newspapers, News Agencies and Books Registration Rules, 2009
-) Press Code of Ethics 1997
-) West Pakistan Press and Publications (References to Session Judges) Rules, 1960
-) West Pakistan Press and Publications (Scrutiny) Rules, 1960.

Electronic Media

Acts/Organances

-) Pakistan Electronic Media Regulatory Authority Ordinance, 2002

-) Electronic Media Regulatory Authority Ordinance, 1997
-) Regulatory Authority for Media Broadcast Organizations, 2000

Rules

-) Pakistan Electronic Media Regulatory Authority Rules 2009
-) Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010
-) Electronic Media (Programs and Advertisements) Code of Conduct, 2015
-) The Television Receiving Apparatus (Possession and Licensing) Rules, 1970.
-) Pakistan Television Corporation Limited Employees Service Rule 1978
-) Pakistan Television Corporation Employees Service Rules 1977

Regulations

-) Pakistan Electronic Media Regulatory Authority (Content) Regulations 2012
-) PEMRA (Television Broadcast Station Operations) Regulations, 2012
-) Pakistan Electronic Media Regulatory Authority (Television Broadcast Operations) Regulations, 2012
-) Pakistan Electronic Media Regulatory Authority (Radio Broadcast Station Operations) Regulations 2012
-) Pakistan Electronic Media Regulatory Authority (Distribution Service Operations) Regulations 2011
-) PEMRA (Appeal and Review) Regulations 2008 (Repealed)
-) Pakistan Electronic Media Regulatory Authority (Media Ownership and Control) Regulations, 2002
-) Pakistan Electronic Media Regulatory Authority (TV/Radio Broadcast Operations) Regulations, 2002
-) Pakistan Electronic Media Regulatory Authority Cable Television (Operations) Regulations, 2002
-) Pakistan Electronic Media Regulatory Authority (Council of Complaints, Organization and Functions) Regulations, 2002
-) Standards for the Cable Television Regulations 2003.

Standards

-) Terms & Conditions of the License to Establish & Operate FM Radio Broadcast Station

-) Terms & Conditions of the License to Establish & Operate FM Radio Broadcast Station (Specialized Subject Station)
-) Multi-channel multi-point distribution service (MMDS) Technical Standards
-) Terms & Conditions of the License to Establish & Operate International Scale Satellite Television Broadcast Station
-) Television Receiving Apparatus (Possession and Licensing) Rules 1970.

Telecommunication and Cyber Laws

Acts & Ordinances

-) Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments) (Act XII of 1996)
-) AJK Adaptation of Pakistan Telecom Re-Organization Act 2005
-) GilgitBaltistan Adaptation Order 2006
-) Telecommunication Ordinance, 1994 (Ordinance LI of 1994)
-) Pakistan Telecommunication Corporation Act, 1991 (Act XVIII of 1991)
-) Pakistan Telecommunication Corporation Ordinance, 1991 (Ordinance XXVII of 1991)
-) Pakistan Telecommunication Corporation Service Regulations 1994
-) Wireless Telegraphy (Amendment) Ordinance, 1970, (Ordinance X of 1970)
-) Post and Telegraph (Amendment) Act, 1962 (Act V of 1962)
-) Telegraph (Amendment) Act, 1950 (Act LXXVII of 1950)
-) The Wireless Telegraphy Act, 1993 (Act of XVII of 1993)
-) Telegraph Act, 1885 (Act of XII of 1885)
-) The Electronic Transaction Ordinance, 2002.
-) The Cyber Crimes Bill, 2009
-) The Prevention of Electronic Crimes Ordinance, 2009
-) The Prevention of Electronic Crimes Act, 2016

Rules

-) Pakistan Telecom Rules, 2000
-) Access Promotion Contribution Rules, 2004 USF Rules, 2006
-) Pakistan Telecommunication Rules 2000

-) PTA Chairman and Member (Appointment and Qualifications) Rules 2013
-) Pakistan Telecommunication Company Limited Service Regulations 1996
-) National Radio and Telecommunication Corporation Employees Service Rules 2005
-) Pakistan Telecommunication Authority (Functions and Powers) Regulations 2004

Regulations

-) Broadband Quality of Service Regulations, 2014
-) Telecom Consumer Protection Regulations 2009
-) Telecom Consumers Protection (Amendment) Regulations, 2012
-) Subscriber Antecedents Verification (2nd Amendment) Regulations, 2012
-) Cellular Mobile Network Quality of Service (Amendment) Regulations, 2012
-) Pakistan Telecommunication Authority (Functions & Powers) (Amendment) Regulations, 2012
-) Telecommunication and Terminal Equipment Installer Regulations, 2012
-) Subscribers Antecedents Verification (Amendment) Regulations, 2012
-) Mobile Virtual Network Operation (MVNO) Regulations, 2012
-) Telecom Consumer Protection (Amendment) Regulations, 2011
-) Numbering Allocation and Administration Regulations, 2011
-) Cellular Mobile Quality of Service Regulations, 2011
-) Access Promotion Regulations, 2005
-) Access Promotion Regulations, 2005 Amendments
-) Subscribers Antecedents Verification Regulations, 2010
-) GPRS/EDGE Service Quality of Service Standards Regulations, 2010 (Telecommunication System Clock)
-) Telecom Consumers Protection (Amendment) Regulations, 2010 Amendment in Class Licensing and Registration Regulations
-) Monitoring and Reconciliation of Telephony Traffic Regulations, 2010
-) Interconnection Dispute Resolution (Amendment) Regulations, 2010

-) Protection from SPAM, Unsolicited fraudulent and obnoxious communication Regulations 2009
-) Telecom Consumer Protection Regulations 2009
-) Protection from Health Related Effects of Radio Base Station Antenna Regulations 2008
-) Monitoring and Reconciliation of International Telephony Traffic Regulations 2008
-) Amendments - PTA (Functions & Powers), Regulations 2006
-) Amendments - Class Licensing and Registration Regulations 2007
-) Wireless Receiving Apparatus (Licensing) Rules, 1957 (Posts and Telegraphs).

General Laws

-) The Punjab Transparency and Right to Information Act, 2013
-) The Khyber Pakhtunkhwa Right to Information Act, 2013
-) Contempt of Court Ordinance, 2003
-) Freedom of Information Ordinance, 2002
-) The Freedom of Information Rules, 2004
-) The Balochistan Freedom of Information Act, 2005
-) The Balochistan Freedom of Information Rules, 2007
-) The Sindh Freedom of Information Act, 2006
-) Defamation Ordinance, 2002
-) Defamation (Amendment) Act, 2004
-) Copyright (Amendment) Ordinance, 2000
-) Pakistan Intellectual Property Rights Organization Ordinance, 2005
-) Federal Supervision of Curricula, Text-Books and Maintenance of Standards of Education Act, 1976 (Act X of 1976)
-) Foreign Cultural Associations (Regulation of Functioning) Act, 1975 (Act LXXIX of
-) Prevention of Anti-National Activities Act, 1974 (Act VII of 1974)
-) Contempt of Court Act, 1973

-) The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V)
-) The Competition Commission Act, 2010
-) Customs Act, 1969
-) West Pakistan Maintenance of Public Order (Amendment) Ordinance, 1963 (IX)
-) Indecent Advertisements Prohibition Act, 1963
-) West Pakistan Maintenance of Public Order Ordinance, 1960 (XXXI)
-) Pakistan Penal Code 1960 (Sections 295 – 298 and Sedition Laws 121a, 123a)
-) West Pakistan Entertainments Duty Act, 1958 (Act X of 1958)
-) Security of Pakistan Act, 1952
-) Press Emergency Powers (Amendment) Act, 1950 (Act LXXII of 1950)
-) Foreign Relations Act, 1939
-) Official Secrets Act, 1923 (XIX)
-) Post Office Act, 1898.

Relevant Provisions of Other Laws

Constitution of Pakistan

Article 19 & 19(A) – Freedom of Expression

Article 159 – Broadcasting and telecasting

Article 204 – Contempt of Court

Article 233 – Power to suspend Fundamental Rights, etc. during emergency period.

Pakistan Penal Code

Section	Offense
124-A	Sedition
153-A	Promoting enmity between different groups, etc.
153-B	Inducing students, etc. to take part in political activity
292	Sale, etc. of obscene books
293	Sale, etc. of obscene objects to young person
295, 295-A to C	Offences relating to religion and willful desecration of places of worships, Holy Books of different religions, damage or defilement of the copy of the Holy Qur'an or extract thereof, or its derogatory use or unlawful purpose, derogatory remarks against the Holy Prophet of Islam.
298	Uttering words with deliberate intent to wound religious feelings;
298-A	Derogatory remarks in respect of holy personages

298-B	Misuse of epithets, descriptions and titles reserved for certain holy personages or places
298-C	Qauidiani calling himself a Muslim
463 to 489-E	Offences relating to documents and to trade or property marks
499 to 502	Defamation
505	Statements conducting to public mischief.

Code of Criminal Procedure

Section	Offense
99-A	Power to declare certain publications forfeited and to issue search-warrants for the same
99-B	Opportunity for application to High Court to set aside order of forfeiture.

Jurisprudence: case law

Below is a brief outline of just a few important cases in our jurisdiction relating to and affecting media.

Political Fairness & Neutrality

PLD 1997 Lahore 852	Court held that news corporations are to allocate equal airtime and space and usage to all political parties.
TamseelJaved vs. Federation of Pakistan, 1984	Federal Shariat Court held that it is an Islamic duty of journalists to verify factual veracity of their statements.
NLR 1991 Civil 46	News corporations were held to be public functionaries expected to act, in a fiduciary relation with public, with fair, impartial and equitable treatment under Article 4 of the Constitution.

Defamation

1984 CLC 325	Prohibiting journalists against defamation and criminal prosecution causing loss to good reputation for honesty, integrity and efficiency
PLD 1990 Lahore 171Ibid 1995 CLC 1246	Court held news reporter to be guilty of defaming the plaintiff for using “hard, oppressive, detrimental [language which] could cause damage to the reputation and integrity of the plaintiff.”

Printing

PLD 1963 Provincial Statutes 300	On press and publication.
PLD 1963 Provincial Statutes 351	Administrative regulations and requirements of registration and set up of press organizations.
PLD 1988 Central Statutes 113	Ibid.
PLD 1989 Central Statutes 120	Ibid.
PLD 1960 Central Statutes 189	Regulation of working conditions and terms of services of journalists.
PLD 1956 Central Statutes 228	Regulation of necessary commodities.

Broadcasting

PLD 1973 Central Statutes 288	Enlisting detailed guidelines for the broadcasting corporations.
PLD 1979 Central Statutes 290	On Section 22 of Pakistan Broadcasting Corporation (PBC) Ordinance, 1979.
PLD 1993 Central Statutes 435	Officers transfers to PBC ceased to be civil servants and became employees of the corporation.
<i>Miscellaneous Media Laws</i>	
PLD 1979 Central Statutes 56	Offence of <i>qazf</i> relating to propagation through media of the offence
PLD 1981 Central Statutes 278	Closure of cinemas, theatres and similar establishments during month of Ramazan
PLD 1974 Central Statutes 151	Prevention of anti-national activities
PLD 1977 Central Statutes 18	Content of contempt of court offence
PLD 1975 SC 383	Ibid
PLD 1990 Central Statutes 20	Propagation of law reports and materials
PLD 1951 Central Statutes 48	Press emergency powers scope
PLD 1976 Central Statutes 247	Extent of Federal oversight of educational material
PLD 1970 Central Statutes 184	Measures against monopolies and trade restrictive practices
PLD 1976 Central Statutes 43	Prohibition of political propaganda by foreign associations
PLD 1975 Central Statutes 9	Barring establishment or operation of political parties with anti-national motives.

ABOUT THE AUTHORS

Toby Mendel

Prior to founding the Centre for Law and Democracy as Executive Director in January 2010, Toby Mendel was for over 12 years Senior Director for Law at ARTICLE 19, a human rights NGO focusing on freedom of expression and the right to information. He has provided expertise on these rights to a wide range of actors including the World Bank, various UN and other intergovernmental bodies, and numerous governments and NGOs in countries all over the world. In these various roles, he has often played a leading role in drafting legislation in the areas of the right to information and media regulation. Before joining ARTICLE 19, he worked as a senior human rights consultant with Oxfam Canada and as a human rights policy analyst at the Canadian International Development Agency (CIDA). He has published extensively on a range of freedom of expression, right to information, communication rights and refugee issues, including comparative legal and analytical studies on public service broadcasting, the right to information and broadcast policy. Toby has an Honours B.A. in mathematics from McGill University and an L.L.B. from Dalhousie University.

Adnan Rehmat

Mr Rehmat has been associated with the Pakistani media sector since 1990, with extensive experience in stints as a journalist, media researcher, media development specialist, development communications expert and media analyst and advisor. Since 2005, Rehmat's work has focused on improving professionalism within Pakistan's burgeoning and diversifying media including strengthening ethics within media, minimizing sensationalism as well as building capacity of the media to improve coverage of development issues and promoting the interface of media and the development sector. He has also been involved in advocacy and lobbying on safety and security of journalists and campaigning against attacks on media, including helping form multi-stakeholder alliances on combating impunity (Pakistan Coalition on Media Safety) and promoting collaborative approaches to tackling increasing ethical challenges (Pakistan Coalition on Ethical Journalism) for media as the country grapples with serious problems of conflict, governance and development that are also adversely affecting the media. He has also been involved in initiatives to improve access to information (Coalition on Right to Information), media legal reforms (Pakistan Coalition on Media Legal Reforms), building news and information capacities of the broadcast sector, particularly the television and radio, and promoting a culture of media and communications research and analysis, among others.

Over 300 articles, features and analyses on media and development issues authored by Rehmat have been published in most of Pakistan's leading publications since 1995. Some of his publications include: (2015) Narratives of Empowerment – a guidebook for journalists on improving TV media portrayal of women in the world of work in Pakistan; (2014) Reporting Under Threat – a book of testimonies of Pakistani journalists facing a wide array of threats in line of duty; (2014) Press Club in Pakistan: A Vulnerable Network – a structural analysis of the state of safety of over 130 press clubs across Pakistan and their security needs assessment; (2012) Media and Parliament in Pakistan – an analysis of how media reforms and political transition in Pakistan can be supplementary; (2011) Reporting Kashmir: Media Practices and

Perceptions in Pakistan-administered Kashmir – an analysis of how media in AJK reports the Pak-India conflict

Muhammad Aftab Alam

Mr Alam is a law and policy expert with more than 15 years of work experience in the fields of rule of law, right to information and transparency, freedom of expression and media development, and governance and legislative reforms. Since 2001, he has been involved in research and advocacy on rule of law, right to information legislation, police reforms, prevention of acid crimes, safety and security of journalists and ethical challenges of media in Pakistan.

Mr Alam established and led Pakistan's first consumer complaints & redress forum at Consumer Rights Commission of Pakistan (CRCP) in 2001. He also worked as a lead expert with CRCP on Asian Development Bank (ADB) funded Access to Justice Program (AJP). He has headed the Law Department of Internews Network INGO as media law and policy advisor during 2003-06. During 2009-2011 supervised/managed a number of research and advocacy projects of the World Bank, Internews, SAARC Human Resource Development Centre (SHRDC) and National Commission on the Status of Women (NCSW), Centre for Peace and Development Initiative (CPDI) and Intermedia Pakistan. Mr. Alam is Founding Director of the Institute for Research, Advocacy and Development (IRADA).

Mr Alam has authored/coauthored number of research publications which include: Employment Contracts of Media Workers: an overview of employment contracts in Pakistan (2016); Right to Information and Media Law in Pakistan (2015); Reference Manual on Freedom of Information and Investigative Journalism; Draft Model Right to Information Act 2012, Mainstreaming of Pakistani Tribal Areas into National Media Legal Framework (2011); and World Bank's research on Post Crisis Need Assessment (PCNA) of the Khyber Pakhtunkhwa province in 2010.

Mr Alam has experience of imparting trainings to journalists, human rights defenders and civil society groups across Pakistan on various themes and skills including but not limited to: Right to Information and Investigative Journalism; Legal Aspects of Unionism in Media Sector; Digital Safety and Security of Journalists; Legal and Political Reporting; Reporting Human Rights Violations; and Elections and Electoral Framework for Election Master Trainers.

Khalid Ishaq

Mr. Khalid Ishaq is an Advocate of High Courts in Pakistan and have been actively practicing law since 2003. Having law graduation from International Islamic University, Islamabad and post graduation in law from University of London, the United Kingdom, Mr. Ishaq is providing consultancy services to various national and multinational organizations which include Department for International Development (DFID) UK, GlaxoSmithKline, HONDA etc. As a legal practitioner, he has been appearing before various local and international forums such as the Indian Premier League's Drug Tribunal (Mumbai) India.